



# FAIRFAX COUNTY

## BOARD OF ZONING APPEALS

**PUBLIC HEARING DATE:** October 28, 2020  
**TIME:** 9:00 A.M.

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V I R G I N I A

**October 20, 2020**

### STAFF REPORT

#### APPEAL APPLICATION A 2019-MV-007

#### MOUNT VERNON DISTRICT

**APPELLANT:** Giles Industrial, LLC

**LOCATION:** 10125 Giles Run Road  
Lorton, VA 22079

**TAX MAP REF:** 113-2 ((03)) D2

**ZONING DISTRICTS:** I-6

**SITE AREA:** 146,256 square feet

**NATURE OF APPEAL:** Appeal of a determination that the appellant is allowing an excavating business to be operated on the property, which includes an accessory storage structure, accessory vehicle repair, and an accessory storage yard, without site plan approval, building permit approval, or a Non-Residential Use Permit, in the I-6 District (Heavy Industrial District), in violation of Zoning Ordinance provisions.

JJS

For information, contact the Zoning Administration Division, Department of Planning and Development, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

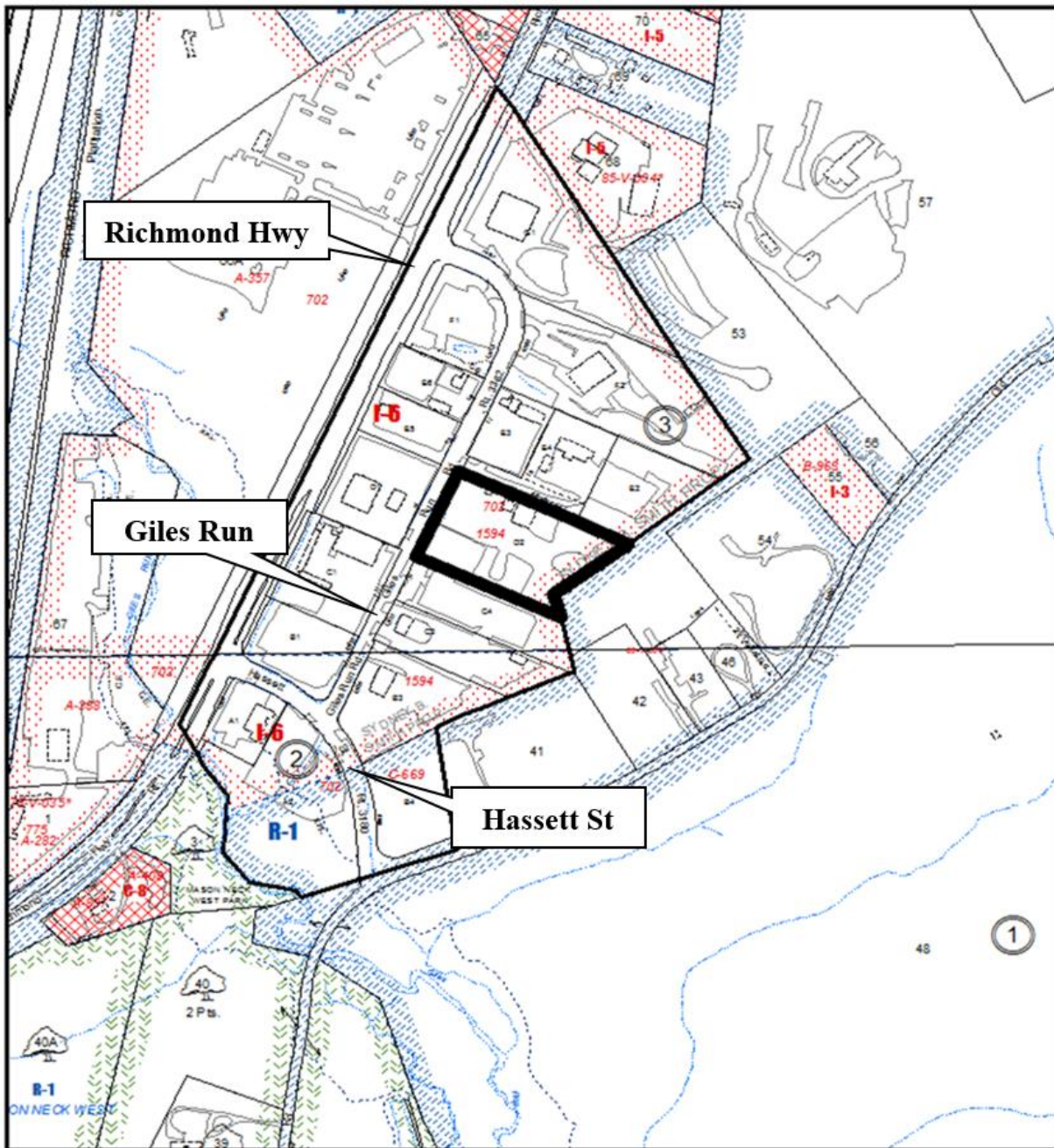


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# APPEAL APPLICATION

**A 2019-MV-007**

**Giles Industrial, LLC, A 2019-MV-007 Appl.** under Sect. 18-301 of the Zoning Ordinance. This is an Appeal of a determination that the appellant is allowing an excavating business to be operated on the property, which includes an accessory storage structure, accessory vehicle repair, and an accessory storage yard, without site plan approval, building permit approval, or a Non-Residential Use Permit, in the I-6 District, in violation of Zoning Ordinance provisions. Located at 10125 Giles Run Road, Lorton, VA 22079. approx. 3.36 acres of land zoned I-6. Mount Vernon District. Tax Map 113-2 ((3)) D2



## DESCRIPTION OF APPEAL

**Appellant:**

Giles Industrial, LLC

**Issue:**

This is an appeal of a determination that the appellant is allowing an excavating business to be operated on the property, which includes an accessory storage structure, accessory vehicle repair, and an accessory storage yard without site plan approval, building permit approval, or a Non-Residential Use Permit, in the I-6 District, in violation of Zoning Ordinance provisions.

**Property Description:**

The Property is located at 10125 Giles Run Road (Lot D-2 of the Sydney B. Smith Property) approximately 680 feet south of the intersection of Giles Run Road and Richmond Highway in the Mount Vernon District in south Fairfax County. The property is developed with a manufactured home structure, two prefabricated metal buildings totaling approximately 6,660 square feet, numerous sea containers, an approximately 525 square feet concrete building, and two or more sheds. Abutting and adjacent properties to the west, north, and south are also zoned I-6 and appear to contain industrial uses. R-1 (Residential District, One Dwelling Unit/Acre) zoned properties are located to the east.

**Appellant's Position:**

The appellant's appeal application packet, including their basis for appeal, is enclosed as Attachment 1.

## ZONING ORDINANCE PROVISIONS

The provisions of the Zoning Ordinance that are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 2.

- Section 17-103, Uses Requiring a Site Plan or a Minor Site Plan
- Section 17-104, Uses Exempt from a Site Plan or a Minor Site Plan
- Section 18-601, Permit Required for Erection of Buildings and Structures
- Paragraph 1 of Section 18-603, Limitations on Approval of Building Permits
- Section 18-701, Non-Residential Use Permits

## **BACKGROUND**

The Property was conveyed to Charles F. Sweeny, the registered agent of Giles Industrial, LLC (the appellant) by virtue of deed recorded in the Fairfax County land records in Deed Book 6435, Page 1355, on July 22, 1986. Subsequently, Giles Industrial, LLC was conveyed the Property with the recordation of a deed in the Fairfax County land records in Deed Book 24430, Page 2073, on January 20, 2016. Copies of these deeds are provided in Attachment 3.

The first sign of activity on the Property was found in a 1990 aerial image that shows the, then mostly forested, Property partially cleared and possibly being used for vehicle/equipment storage.

Notices of Violations (NOVs) were issued by the Department of Code Compliance (DCC) to Mr. Sweeny in 1995 on September 11, September 19, and September 20, for storing two construction trailers, two storage trailers, three front-end loaders, five dump trucks, an oil tank, buckets, trash, and debris on the Property without site plan approval and for not having a Non-Residential Use Permit (Non-RUP).

On October 24, 1995, a Non-RUP application was submitted to allow Rock Hard Excavating, the current Director of which is Mr. Sweeny, to operate a storage yard on the Property.

On November 17, 1995, an improvement survey and the application for Minor Site Plan Waiver No. 016973 for the Property, the applicant of which was Rock Hard Excavating (the applicant's stated firm) and Charles Sweeny (the stated applicant), was received by Fairfax County. This survey indicates that there was a "storage/junk yard" use present on the Property and that two trailers, a concrete building, and shed had been erected on the Property. It is indicated that the purpose of this waiver application was to establish an existing "contracting storage yard - equipment & materials only (no employees)." On February 1, 1996, Mr. Sweeny was issued a letter by the Fairfax County Site Review Branch denying Minor Site Plan Waiver No. 016973 application for, in part, a lack of justification. This letter and its attachments, including the application and reviewer comments, are enclosed as Attachment 4.

On February 23, 1999, an NOV was issued again to Mr. Sweeny for "occupying or allowing the occupancy" of the Property without site plan approval and without a Non-RUP. This NOV was not appealed.

On January 3, based on a complaint, DCC inspected a nearby property, 10208 Old Colchester Road, where it was discovered that Rock Hard Excavating was operating a roll-off dumpster and sorting operation. Information collected during the inspection of this operation led DCC to inspect the main operation of Rock Hard Excavation, which is located at the subject Property, on the same day. Based on the inspection of the Property on January 3, 2019, and subsequent research, it was determined that Rock Hard Excavation was operating an excavating business on the Property without site plan approval and without the issuance of a Non-RUP.

On March 20, 2019, the appellant was issued an NOV for allowing an excavating business to operate on the Property without site plan approval and without the issuance of a Non-RUP. An application for appeal of the NOV, which is enclosed as Attachment 1, was filed on April 18, 2019, and accepted on May 22, 2019. Several administrative moves of the public hearing for this appeal

were given, the reasoning for which will be discussed later in this report. The public hearing is now scheduled for October 28, 2020.

On September 18, 2019, an NOV was issued to the appellant by the Health Department, which is enclosed as Attachment 5, for a lack of an approved means of sewage disposal on the Property. As discussed at the end of this report, the appellant claims to be in the process of clearing this violation, which would facilitate clearing the zoning violations as well.

## **SUMMARY OF THE APPELLANT'S POSITION**

The appellant is appealing the Zoning Administrator's determination that they have allowed an excavating business to be established and expanded on the Property without site plan approval and without the issuance of a Non-RUP. The "Statement in Support of Appeal" (the Statement) states that "(t)he purpose of this appeal is to preserve the Appellant's rights, stay enforcement of the violation, and allow time for further investigation, site plan preparation and approval as needed, and issuance of building permits and a Non-RUP." However, the Statement also makes a number of claims regarding the appellant's good intentions and lack of awareness of the fact that such use and development of the Property required building permits, site plan approval, and the issuance of a Non-RUP; and regarding the County's inaction on a site plan that was allegedly submitted. Regarding these claims, the Statement alleges that once the appellant realized that such approvals were necessary, the appellant submitted a site plan to comply with the requirements, but the County failed to act on the alleged site plan submission. In turn, the appellant thought that site plan approval was no longer required and ceased pursuing its approval.

## **ZONING ADMINISTRATOR'S POSITION**

The appellant has not refuted the fact that the use they are conducting on the property and the development of the Property requires site plan approval, building permit approval, or the issuance of a Non-RUP. In addition, no evidence has been found or presented that the use is exempt from such approvals or requirements. Based on DCC's investigation, which includes photos taken and observations made of the property, the analysis of historical pictometry and aerial images, and research of the property's approvals, it is the Zoning Administrator's position that an excavation business is operating on the Property, including within structures that have not been issued building permits, without required site plan approval and without a required Non-RUP being issued, which are violations of Sect. 17-103, Sect. 18-601, and Sect. 18-701 of the Zoning Ordinance.

## **Inspection and Investigation of the Property**

On January 3, 2019, a DCC investigator entered the property and observed multiple activities, structures, vehicles, equipment, and other objects that reveal that the Property was being used to operate an excavating business. During the visit, the investigator observed a building being used by employees for office work and to repair and maintain heavy equipment; numerous trucks, tractor-trailers, roll-off dumpsters, and sea containers; and earth-moving heavy equipment. Photographs captured during this inspection, which are displayed below, verify many aspects of these observations.

**DCC Inspection Photo – Heavy Equipment, Metal Building, Trucks**



**DCC Inspection Photo – Dump Trucks, Sea Container, Roll-Off Dumpsters**

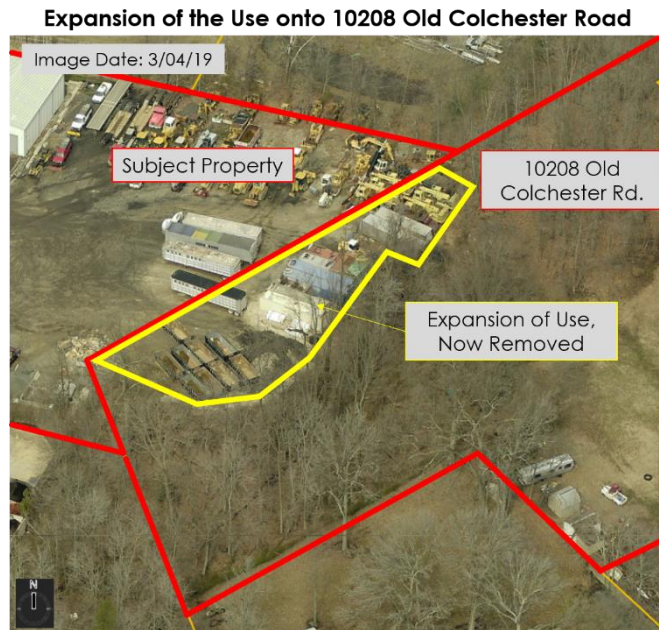


**DCC Inspection Photo – Heavy Equipment & Tractor-Trailers**



An analysis of a pictometry image from March 4, 2019 (See Attachment 6), captured 16 days before the NOV was issued, reveals more detail about Rock Hard Excavation's operation on the Property, such as the presence of a manufactured home structure, two prefabricated metal buildings (with a total building footprint of approximately 6,660 square feet), a concrete building (with a

building footprint of approx. 525 square feet), two visible sheds, and an abundance of earth-moving and construction equipment (including what appears to be excavating equipment, such as bulldozers and hydraulic excavators). It is noted that, as one can see in the graphic to the right, Rock Hard Excavation's operation had expanded onto the neighboring property at the time this pictometry image was captured. On October 13, 2020, DCC visited the Property and found that this expansion was no longer present on the neighboring property.



This evidence clearly shows that a business involved in earth-moving is operating on the Property at the time the photos were taken, the observations were made, and the pictometry was captured.

In addition, many of the dumpsters have a “Rock Hard Excavating” logo painted on them and, as shown in the graphic to the right, there is a Rock Hard Excavating sign posted at the entrance of the Property. These facts together serve as evidence that not only is there such a business operating on the Property, but also that the business is an excavating business that goes by the name of Rock Hard Excavating.

**DCC Inspection Photo – Rock Hard Excavation Sign, Dump Trucks**



### **Sect. 17-103, Uses Requiring a Site Plan or a Minor Site Plan**

The evidence gathered in the investigation and inspection of the Property, which includes photos taken and observations made of the property, the analysis of historical pictometry, and aerial images and historical research of the property's approvals, reveals that an excavation business is operating on the Property without required site plan approval, which is a violation of Sect. 17-103 of the Zoning Ordinance, as stated below:

#### **17-103 Uses Requiring a Site Plan or a Minor Site Plan**

Prior to construction and/or establishment, the following uses, including modifications or alterations to existing uses, shall require site plan or minor site plan approval unless exempt under Sect. 104 below:

### 3. All permitted uses in the I districts.

Notwithstanding the above, the Director may approve a partial Building Permit prior to site plan or minor site plan approval in accordance with the provisions of the Virginia Uniform Statewide Building Code, provided, however, that such approval shall not guarantee the approval of a site plan or subsequent Building Permits.

The appellant claims that the County failed to act on a site plan that was allegedly submitted in the 1990's, however a review of County records found that a minor site plan was submitted in 1995 for review with a minor site plan waiver application, which was not approved. Therefore, the appellant's claim about the County's inaction is false. In addition, County records indicate that no other site plan was ever submitted.

Based on the evidence presented in the Inspection and Investigation of the Property section of this report and on the fact that no site plan was ever approved for the property, it is clear that the appellant is in violation of Sect. 17-103 of the Zoning Ordinance. Furthermore, the use of the Property has expanded and changed since 1995-96, including the fact that there are a number of employees active on the site currently, which is contrary to the statement in the minor site plan waiver application that the proposed use will not include employees. Therefore, even if that minor site plan had been approved in 1996, a new site plan would likely still be needed due to the changes in the use of the property since that time. Finally, the excavating use on the Property does not qualify as a use that is not subject to the requirement for a site plan or a minor site plan per Sect. 17-104 of the Zoning Ordinance, the text of which can be found in Attachment 2.

### **Part 6 of Article 18, Building Permits**

The evidence gathered in the investigation and inspection of the Property, which includes photos taken and observations made of the property, the analysis of historical pictometry and aerial images, and historical research of the property's approvals, reveals that a vehicle repair/office building has been erected on the Property without required building permits being issued, which is a violation of Sect. 18-601 of the Zoning Ordinance as stated below:

#### **18-601 Permit Required for Erection of Buildings and Structures**

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit application has been approved by the Zoning Administrator.

As indicated in the NOV issued to the appellant, there is a building on the property that is required to obtain a building permit for its erection. Since it was erected without such a building permit, the appellant is in violation of Sect. 18-601 of the Zoning Ordinance. However, while this violation is noted in the NOV, without site plan approval, building permits cannot be issued per Par. 1 of Sect. 18-603 of the Zoning Ordinance as stated below:



**18-603 Permit Required for Erection of Buildings and Structures**

1. No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.

While the NOV only mentions only one building that requires a building permit for its erection, based on analysis of pictometry images, there appears to be several buildings that may require the approval and issuance of building permits. If the appellant obtains site plan approval, building permits will then need to be approved for each building and structure that requires a permit.

**Sect. 18-701, Permit Required for Occupancy or Use**

The evidence gathered in the investigation and inspection of the Property, which includes photos taken and observations made of the property the analysis of historical pictometry and aerial images and historical research of the property's approvals, reveals that an excavation business is operating on the Property without a Non-RUP, which is a violation of Sect. 18-701 of the Zoning Ordinance, as stated below:

**18-701 Permit Required for Occupancy**

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall be permitted, unless and until a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Part. A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

Aerial images show that the Property was completely covered in vegetation in 1980 and that the storage of equipment/vehicles began as far back as 1990 and continued to expand through the years ahead. This indicates that such activity began on the Property sometime between 1980 and 1990, the same timeframe in which Mr. Sweeny acquired the Property. In addition, the appellant stated in a minor site plan waiver application received in 1995 that Rock Hard Excavation had occupied the Property for 12 years prior to the day that application was completed. Lastly, the appellant admits in the Statement that he has been using the Property to operate his business, Rock Hard Excavation, since shortly after he acquired the Property in 1986. All of this together solidifies the fact that Mr. Sweeny's excavation business has occupied and used the Property for over thirty years without ever being issued a Non-RUP even though one was required by the Zoning

Ordinance throughout this timeframe. In addition, evidence gathered in the inspection and investigation of the Property verifies that this use existed on the day the inspection was conducted and that the use continued until at least the most recent pictometry image was captured, which was March 4, 2019, 16 days before the NOV was issued. A recent inspection of the Property by DCC revealed that the use continues as of October 13, 2020.

Moreover, the appellant has known about the County's Non-RUP and site plan requirements for at least the past 25 years and has not rectified those violations. The notion that he thought that such requirements were no longer applicable to him due to the alleged inaction of the County discussed earlier is a false narrative since he was issued another NOV in 1999 for the same violations he was charged with in 1995, the year he submitted a Non-RUP application and minor site plan waiver application. If he did think that a Non-RUP was no longer required after the County's alleged inaction in 1995-96, it is implausible that he still believed this after having received the NOV in 1999. It is evident that the appellant has been knowingly violating the Zoning Ordinance for decades. After 24 years of inaction on the appellants part to resolve the violations, it is only recently that steps were taken to do so, which is explained below.

### **The Appellant's Proposal to Resolve the Violations**

The appellant's dilemma in resolving the zoning violations on the Property is rooted in the inability of the Property to accommodate an onsite sewage facility (i.e. a septic tank and drainfield combination) as required by the Zoning Ordinance, thereby generating a Health Department violation as noted below. Discussion with the Health Department confirms the appellant's claims that there is not a suitable area for an onsite sewage facility to be located on the Property and sewer service is not available to the Property. The Health Department has issued a Notice of Alleged Violation (NOAV) to the appellant for operating a business within structures that are designed for human occupancy without proper sewage facilities. While the Health Department does not take into consideration the zoning of a property when approving onsite sewage facilities, Par. 2 of Sect. 2-503 of the Zoning Ordinance requires individual sewage disposal system to be located on the same lot as the principal use and within a zoning district which permits the principal use served by the septic field. In addition, site plan approval cannot be granted without onsite sewage facilities being shown if no sewer service is available and a Non-RUP cannot be issued to the appellant without site plan approval. Therefore, if the appellant would like to continue using the Property in the way he currently allows it to be used, the NOAV must be resolved before the NOVs for zoning violations can be resolved.

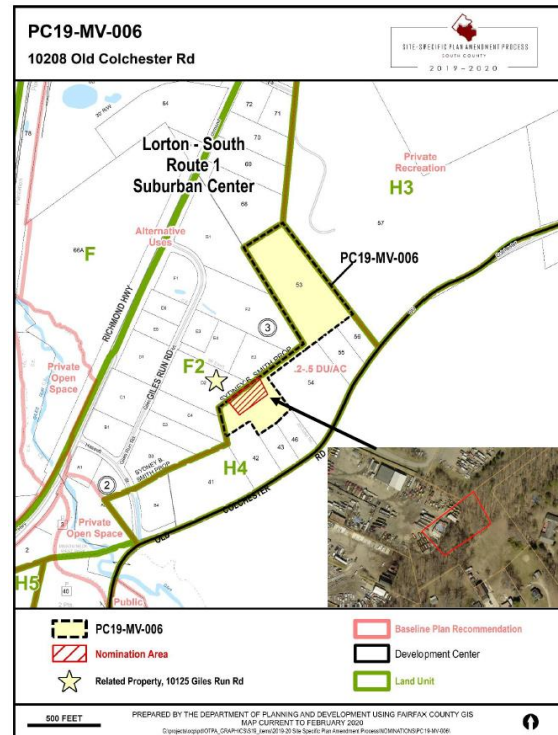
The appellant has expressed a desire to construct an onsite sewage facility and subsequently attain site plan approval and a Non-RUP. However, the only option to do so, apart from transforming the use of the property to a use that does not require buildings designed for human occupancy, is to obtain an abutting property, consolidate it with the subject property, construct the onsite sewage facility on that property, and attain building permit and site plan approval for the entire newly consolidated lot. The appellant claims that while obtaining portions of abutting industrially zoned properties is not an option, the abutting property to the east, 10208 Old Colchester Road, can be obtained, consolidated with the subject property, and accommodate the construction of an onsite sewage facility. However, this property is zoned R-1, a zoning district in which does not permit excavating businesses by-right, through special permit approval, or through special exception approval. Because of this, a rezoning of a portion of the abutting property to the I-6 District would be the only path forward for the appellant to continue their current operation. Unfortunately, the

Property is located on the Comprehensive Land Use Map in Sub-unit H4 of the LP2-Lorton-South Route 1 Community Planning Sector, which is planned for residential use at 0.2 – 0.5 dwelling units per acre with recommendations to provide substantial buffering from the adjacent industrial uses to the west in Sub-unit F2, the Sub-unit in which the subject property is located. This designation on the Comprehensive Land Use Map does not accommodate a rezoning of the Property to the I-6 District. Consequently, as shown in the map here, the appellant proposes to amend said map to accommodate said rezoning.

Subsequent to the issuance of the NOV and the NOAV, a meeting was held with Zoning Administration Division staff, discussions with Land Development Services staff were held, and a preapplication meeting with the Zoning Evaluation Division and other staff attendees was held. On January 3, 2020, a Site Specific Plan Amendment (SSPA) nomination application (case number PC 19-MV-006) was submitted on behalf of the owners of 10208 Old Colchester Road (Colchester, LLC, the owner of which is identified as Charles Sweeny on said application) to the Planning Division to nominate 1.21 acres of 10208 Old Colchester Road. The nomination proposes to redraw the sub-unit boundary line and replan the site for industrial use, which would prepare for a future rezoning application to the I-6 District. As discussed in the preliminary staff report for this nomination application (enclosed as Attachment 7), Planning Division Staff did not recommend approval because it “would expand the boundaries of the industrial use recommendation, and conflicts with recommendations for the sub-unit regarding buffering the planned low-density residential use from the adjacent industrial uses.”

On September 1, 2020, a preliminary vote was taken by the task force on the above-mentioned nomination and was approved. However, in a final vote, the task force voted to deny the application on September 15, 2020. The Planning commission will hold public meetings on the matter on either November 18, 2020, or November 19, 2020, and the Board of Supervisors will vote on the matter in January 2021.

While there were previously several administrative moves of the public hearing for this appeal (one other was issued for scheduling conflicts) based on ongoing efforts to resolve the NOVs and delays in this process due to Covid-19, staff has determined that administratively moving this public hearing further is not the appropriate approach due to the duration and uncertainty of success of the proposed steps the appellant is taking to attempt to come into compliance.



## **CONCLUSION**

As detailed above, based on DCC's investigation, which includes photos taken and observations made of the property, the analysis of historical pictometry and aerial images, and historical research of the property's approvals, it has been shown that, at the time of inspection and most likely since then, an excavation business is operating on the Property, including within structures that have not been issued building permits, without required site plan approval and without a required Non-RUP being issued, which are violations of Sect. 17-103, Sect. 18-601, and Sect. 18-701 of the Zoning Ordinance. The appellant has been aware of these deficiencies for at least 25 years and has not corrected them.

While it is true that the appellant has taken steps to attempt to resolve the onsite sewage facility issue on the property, which could provide a possible path forward to maintain the use of the Property in its current form without violating Zoning Ordinance provisions, the prospects of a rezoning have diminished with the Planning Division's recommendation of denial and the recent denial of the appellant's SSPA nomination application by the task force. In the face of this reality, the appellant remains in violation the Zoning Ordinance as this process proceeds. In addition, if the use of the Property were altered to not require buildings that were designed for human occupancy, the sewage disposal issue would not be a barrier to resolving the zoning violations. Given that there are viable options for the appellant to resolve the zoning issues currently, it is the Zoning Administrator's position that a decision on this matter should be made at this time because more delay will unnecessarily prolong the negative effects associated with this unpermitted activity. Therefore, staff requests that the BZA uphold the determination of the Zoning Administrator as set forth in the NOV dated March 20, 2019.

## **ATTACHMENTS:**

1. Appellant's Application Packet
2. Applicable Zoning Ordinance Provisions
3. Most Recent Deeds Conveying the Property
4. Letter of Denial for the Application of Minor Site Plan Waiver No. 016973
5. Health Department Notice of Violation
6. March 4, 2019, Pictometry Image
7. Preliminary Staff Report for SSPA Nomination Application PC 19-MV-006

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COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
APPLICATION FOR APPEAL



APPLICATION NO. A 2019-MV-007  
(Assigned by Staff)

NAME OF APPELLANT: Giles Industrial LLC

NATURE OF THE APPEAL:

The Appellant, Giles Industrial LLC, challenges the conclusions in the Notice of Violation dated March 20, 2019 that certain structures were constructed without the benefit of an approved site plan, building permits and the issuance of a Non-Residential Use Permit. The appeal is submitted to allow time to investigate this matter; perform corrective actions as may be needed; and to stay enforcement of the Notice of Violation.

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL March 20, 2019

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

The Appellant is the owner of the property that is the subject of the Notice of Violation.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 10125 Giles Run Road, Lorton, Virginia 22079

TAX MAP DESCRIPTION: 113-2 ((3)) D2

Lynne J. Strobel, Agent

Type or Print Name of Appellant or Agent

Lynne J. Strobel  
Signature of Appellant or Agent

2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201-3359

Address

703-528-4700

Telephone No: Home

Work

Cell

Please type or print name, address, and phone number of contact person if different from above:

DO NOT WRITE IN THIS SPACE

Subdivision Name: Commercial

Total Area (Acres/Square Feet): 146,256 SQ FT - (3.35 AC.)

Present Zoning: I-6

Supervisor District: MOUNT VERNON

Date application received: 4/18/19 Application Fee Paid: \$ 600-

Date application accepted: MAY 22, 2019

Lynne J. Strobel  
(703) 528-4700 Ext. 5418  
[lstrobel@thelandlawyers.com](mailto:lstrobel@thelandlawyers.com)



**WALSH COLUCCI  
LUBELEY & WALSH PC**

April 18, 2019

**Via Hand Delivery**

Leslie B. Johnson  
Zoning Administrator  
Zoning Administration  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035

Lorraine A. Giovinazzo  
Clerk to the Board of Zoning Appeals  
Fairfax County Department of Planning and Zoning  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035

Re: Appeal of Notice of Violation dated March 20, 2019, Issued by  
David Domin, Code Compliance Investigator  
Subject Property: Fairfax County Tax Map 113-2 ((3)) D2  
Appellant: Giles Industrial LLC

Dear Ms. Johnson and Ms. Giovinazzo:

Please accept this letter as a request for an appeal of a Notice of Violation dated March 20, 2019 (the "Notice"), a copy of which is enclosed, that was issued for the Subject Property. The Subject Property is outlined in red on enclosed zoning section sheet 113-2. Please accept the following information as grounds for an appeal in accordance with Fairfax County Zoning Ordinance (the "Zoning Ordinance") Section 18-304 and applicable state regulations. The Appellant is an aggrieved party as the owner of the Subject Property and the recipient of the Notice.

The Notice was issued as a result of an inspection of the Subject Property on January 3, 2019. The Notice states that an excavation business, including a vehicle repair facility and offices, an accessory storage structure, and a storage yard, have been established or expanded on the Subject Property. Further, there is no record of an approved site plan, issuance of a building permit, or issuance of a Non-Residential Use Permit (Non-RUP). The Notice further directs the Appellant to clear the violation by either vacating the premises or obtaining site plan approval, issuance of a building permit, and issuance of a Non-RUP.

The Subject Property is zoned to the I-6 District, which is defined by the Fairfax County Zoning Ordinance (the "Zoning Ordinance") as the County's Heavy Industrial District. The I-6

ATTORNEYS AT LAW

703 528 4700 • [WWW.THELANDLAWYERS.COM](http://WWW.THELANDLAWYERS.COM)  
2200 CLARENDON BLVD. • SUITE 1300 • ARLINGTON, VA 22201-3359

LOUDOUN 703 737 3633 • WOODBRIDGE 703 680 4664

District is to provide areas for heavy industrial uses with minimum performance standards, and the Zoning Ordinance states that "this district is intended for use by the largest manufacturing operations, heavy equipment, construction and fuel yards, major transportation terminals and other basic industrial activities required in an urban economy." A variety of industrial uses are permitted in the I-6 District including those that support building and development. All of the properties surrounding the Subject Property are zoned I-6 and are utilized for a variety of industrial purposes such as trucking establishments, vehicle storage, and construction yards.

The Appellant purchased the Subject Property on or about July 21, 1986, which is over 30 years ago. At that time, the Subject Property was overgrown with vines and other vegetation and had been the site of illegal dumping for years. The Appellant cleaned up the Subject Property and began using it as a place to store equipment used in its excavation business. The existing zoning permits storage yards and the Appellant was unaware that the simple storage of vehicles required approval of a site plan and the issuance of a Non-RUP. Over the course of the next thirty (30) years in support of its business, the Appellant periodically made minor improvements to the Subject Property primarily with the installation of sea containers. As sea containers are pre-fabricated, they were moved onto the Subject Property and utilized first for small offices then for vehicle service, both of which uses are permitted uses in the I-6 District. The Appellant was unaware of the necessity to obtain a site plan, building permits, and a Non-RUP. The Appellant, did, however, have the improvements inspected by a structural engineer to ensure safety.

Several years ago, an inspector identified the need for a site plan. The Appellant prepared and submitted a site plan, but it was never acted on by Fairfax County. As there was no additional pursuit of the site plan, the Appellant mistakenly believed that it was determined that a site plan was not required for the Subject Property. Given the zoning of the Subject Property and the existing surrounding uses, the Appellant did not believe any further approvals were necessary from Fairfax County. The Appellant has paid property taxes and business taxes for the entire time that the Subject Property has been in use.

Upon receipt of the Notice, the Appellant retained the services of a professional civil engineer to begin investigating prior approvals and evaluating the Subject Property in order to prepare a site plan, as needed. Based upon the engineer's findings, the Appellant intends to submit and receive approval of a site plan, followed by the application for and issuance of building permits and a Non-RUP. The civil engineer has indicated that preparation and submission of a site plan to Fairfax County will take several months. After submission, it may take 9 to twelve months for the site plan to be approved. As a result, the resolution of the Notice will take some time.

The purpose of this appeal is to preserve the Appellant's rights, stay enforcement of the violation, and allow time for further investigation, site plan preparation and approval as needed, and issuance of building permits and a Non-RUP. The Appellant will diligently pursue these items in good faith and will periodically provide updates to the Zoning Administrator. At such time as a Non-RUP is issued, the Notice will be moot and the appeal will be withdrawn.

I would appreciate the acceptance of this appeal at your earliest convenience. I reserve the right to enter additional materials into the record both prior to and during the public hearing, if scheduled, and to supplement this statement, as needed. This appeal is submitted to stay enforcement of the Notice of Violation in accordance with Virginia Code Section 15.2-2311(B).

Should you have any questions regarding the above, or require additional information, please do not hesitate to contact me. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.



Lynne J. Strobel

LJS:kae

Enclosure

cc: Charles and Terri Sweeny  
Bob White  
Aaron Vinson  
Terry Bolyard





# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

## NOTICE OF VIOLATION Fairfax County Zoning Ordinance

**DATE OF ISSUANCE:** March 20, 2019

**METHOD OF SERVICE:** OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:** Giles Industrial LLC  
**ADDRESS:** 1933 Franklin Avenue  
Mclean, VA 22101

**LOCATION OF VIOLATION:** 10125 Giles Run Road  
Lorton, VA 22079-2410

**TAX MAP REF:** 1132 03 D2

**ZONING DISTRICT:** I-6

**CASE #:** 201901223 **SR #:** 158520

**ISSUING INVESTIGATOR:** David Domin, (703)324-1562

### POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§17.103	\$ 200.00	\$ 500.00
	§18.701	\$ 200.00	\$ 500.00
	<b>TOTAL:</b>	<b>\$ 400.00</b>	<b>\$ 1000.00</b>

Dear Responsible Party:

An inspection of the above referenced property on January 3, 2019 revealed the following violation(s) of the Fairfax County Zoning Ordinance:

§ 17-103 Site Plan  
§ 18-601 Building Permit:

---

Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

An inspection has determined that an excavating business to include a structure which contains a vehicle repair facility and offices, an accessory storage structure, and a storage yard, have been established or expanded on this property. A review of Fairfax County records revealed that no site plan has been approved to permit this. The establishment or expansion of this use on this property is in violation of Sect. 17-103 of the Zoning Ordinance which states:

Prior to construction and/or establishment, the following uses, including modifications or alterations to existing uses, shall require site plan or minor site plan approval unless exempt under Sect. 104 below:

1. All permitted uses in the R districts.
2. All permitted uses in the C districts.
3. All permitted uses in the I districts.
4. All permitted uses in the P districts.
5. Those special permit uses which are subject to a site plan as set forth in Article 8.
6. Those special exception uses which are subject to a site plan as set forth in Article 9.

Furthermore, a review of Fairfax County Land Development records indicates that a Building Permit was never obtained for the construction/erection of the vehicle repair/office building and the accessory storage structure as required in Sect. 18-601 of the Zoning Ordinance. Therefore, the construction/erection of the vehicle repair/office building and the accessory storage structure is in violation of Sect. 18-601 of the Zoning Ordinance which specifies:

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit Application has been approved by the Zoning Administrator.

Finally, a Building Permit cannot be issued for the vehicle repair/office building and the accessory storage structure until it is shown on an approved site plan as required by Par. 1 of Sect. 18-603. This provision states that:

No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance.

Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.

You are hereby directed to clear these violations within thirty (30) days after of the date of this notice. Compliance must be accomplished by:

- Removing the vehicle repair/office building, the accessory storage structure, and the storage yard from the property to return this to a vacant lot; or
- Submitting to and obtaining approval from the Department of Land Development Services (LDS) for a new site plan to reflect the use of the excavating business on the property; and
- Applying for a Building Permit for the vehicle repair/office structure

---

#### **§ 18-701 Non-Residential Use Permit:**

It has been determined that Rock Hard Excavating, which is an excavation business, is occupying the above referenced property without having obtained the required Non-Residential Use Permit (Non-RUP). Therefore, you are in violation of Sect. 18-701 of the Fairfax County Zoning Ordinance which states:

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall be permitted, unless and until a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Part. A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

If a Special Permit or Special Exception is required:

#### **2-303 Special Permit Uses**

1. No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been approved by the BZA and the use has been established in accordance with the provisions of Article 8.
2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special permit by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.

3. No special permit shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use group available by special permit. Provided, however, that if there is an existing and currently valid special permit for a use located on a lot which is zoned to more than one zoning district and there is an amendment to this Ordinance after the approval of the special permit which allows the use as a permitted use in one of the zoning districts in which the use is located while the requirement for a special permit continues in the other zoning district(s) in which the use is located, the special permit shall remain in full force and effect for the entire property, unless the BZA approves an amendment application to remove the land area from the special permit approval.

#### **2-304 Special Exception Uses**

1. No use of a structure or land that is designated as a special exception use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special exception use in such district, unless a special exception has been approved by the Board and the use has been established in accordance with the provisions of Article 9.

2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special exception by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.

3. No special exception shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use category available by special exception. Provided, however, that if there is an existing and currently valid special exception for a use located on a lot which is zoned to more than one zoning district and there is an amendment to this Ordinance after the approval of the special exception which allows the use as a permitted use in one of the zoning districts in which the use is located while the requirement for a special exception continues in the other zoning district(s) in which the use is located, the special exception shall remain in full force and effect for the entire property, unless the Board approves an amendment application to remove the land area from the special exception approval.

You are hereby directed to clear this violation within thirty (30) days of the date of this Notice.

Compliance can be accomplished by either:

- Vacating the premises. or;
- Obtaining the required Non-RUP. *When filing an application for the permit, bring this Notice with you.*

\*Obtaining a Non-RUP may require site plan approval, a building permit, and/or a submission of a parking tabulation.

Resources:

- Building Permit Information (LDS):

- Customer Technical Support Center, 12055 Government Center Pkwy, 2nd floor
  - 703-222-0801
  - <http://www.fairfaxcounty.gov/dpwes/buildingpermits>
  - Non-Residential Use Permit (Zoning):
    - Zoning Permit Review Branch, 12055 Government Center Pkwy, 2<sup>nd</sup> floor
    - 703-222-1082
    - <http://www.fairfaxcounty.gov/dpz/zoning-non-rup.htm>
  - Site Plan & Parking Tabulation Information (LDS):
    - Site Review & Inspections, 12055 Government Center Pkwy, 5th floor
    - 703-324-1720
    - <http://www.fairfaxcounty.gov/dpwes/sitedevelopment>
  - Special Exceptions and Special Permits (Zoning)
    - Zoning Evaluation Division, 12055 Government Center Pkwy, 8th floor
    - 703-324-1290
    - <http://www.fairfaxcounty.gov/dpz/dpzdivisions/zed.htm>
- 

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1). The Zoning Administrator may also seek to enjoin this violation.

Civil penalties entered by the General District Court shall be paid to the Office of the County Attorney. Investigators may not accept any payments, including those associated with fines and fees.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the decision being appealed, the date of decision, the grounds for the appeal, how the appellant is an aggrieved party, any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact:

Zoning Administration Division

Giles Industrial LLC  
March 20, 2019  
SR 158520  
Page 6

12055 Government Center Parkway, Suite 807  
Fairfax, Virginia 22035  
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-1562. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

  
\_\_\_\_\_  
Signature

David Domin  
Code Compliance Investigator  
(703)324-1562  
David.Domin@fairfaxcounty.gov

# ATTACHMENT 2

## FAIRFAX COUNTY ZONING ORDINANCE PROVISIONS

### ARTICLE 17

#### SITE PLANS

#### PART 1

#### 17-100 GENERAL REQUIREMENTS

##### 17-103 Uses Requiring a Site Plan or a Minor Site Plan

Prior to construction and/or establishment, the following uses, including modifications or alterations to existing uses, shall require site plan or minor site plan approval unless exempt under Sect. 104 below:

3. All permitted uses in the I districts.

Notwithstanding the above, the Director may approve a partial Building Permit prior to site plan or minor site plan approval in accordance with the provisions of the Virginia Uniform Statewide Building Code, provided, however, that such approval shall not guarantee the approval of a site plan or subsequent Building Permits.

##### 17-104 Uses Exempt from a Site Plan or a Minor Site Plan

Unless otherwise required by proffered conditions or development conditions of an approved rezoning, special permit, special exception or variance, the following uses shall not be subject to the requirement for a site plan or a minor site plan. Such uses, however, will still be subject to all other applicable provisions of this Ordinance, the Public Facilities Manual and The Code.

1. Single family detached dwellings and their related accessory uses and structures.
2. Additions to single family attached dwellings and mobile homes, and related accessory uses and structures.
3. Installation of new mobile homes on existing pads within an existing mobile home park.
4. Agriculture.
5. Accessory uses and structures such as statues, flagpoles, fences and walls; additions of ornamental features such as bay windows, chimneys, awnings, canopies or other façade improvements; and accessory storage structures for recycling or waste disposal.

6. In existing open space areas or public parkland, recreational amenities which do not exceed a total of 2500 square feet of disturbed area, such as gazebos, benches and playground equipment; provided however, that this shall not include features such as swimming pools, paved tennis or play courts.
7. Accessory service uses and changes in use to a use which has the same or lesser parking requirement than the previous use.
8. Accessory service uses and changes in use to a use which has a greater parking requirement than the previous use shall require submission and approval of a parking tabulation to demonstrate that the number of existing parking spaces on site meets the minimum off-street parking requirements for all uses. Parking tabulations shall be submitted on forms provided by the Director, certified by an engineer or land surveyor authorized by the State to practice as such and shall include the written consent of the property owner. For condominiums, written consent shall be provided in accordance with the provisions of Sect. 2-518
9. Parking redesignation plans prepared in accordance with the provisions of Article 11.
10. Signs.
11. Home occupation uses in accordance with Part 3 of Article 10.
12. Bus shelters.
13. Public commuter park-and-ride lots which utilize existing off-street parking spaces accessory to another use.
14. Temporary public uses not to exceed 875 square feet of gross floor area for a maximum time period of two (2) continuous years, and quasi-public athletic fields in the C-1 thru C-8 and I-1 thru I-6 Districts as an interim use.
15. Temporary uses and structures such as stands for retail sales of seasonal items and tents for temporary events, for a maximum time period of twenty-one (21) days or less and further provided there is a minimum of thirty (30) days between such temporary uses on a site.
16. Antennas and satellite earth stations; accessory outdoor storage and display; and additions and alterations to existing uses and site modifications which may include, but are not limited to, changes or additions to decks, patios, concrete slabs, vestibules, loading docks, mechanical equipment, storage structures, generators, walkways, landscaping, paving, and light poles/lighting fixtures. All such uses or activities must not:
  - A. Exceed 500 square feet of gross floor area or 2500 square feet of disturbed land area as defined in Chapter 104 of The Code;



- B. Exceed 750 square feet of gross floor area or 2500 square feet of disturbed land area as defined in Chapter 104 of The Code for additions and alterations to provide an accessibility improvement;
- C. Exceed the maximum floor area ratio of the district in which located or the maximum floor area ratio permitted by any proffered or development conditions;
- D. Reduce required landscaping, open space, parking, travel aisles or driveways, and transitional screening or barriers; and
- E. Necessitate the installation or relocation of storm sewer, public water or public sewer.

Any additions or alterations to existing uses that increase the number of required offstreet parking spaces requires the submission of a parking tabulation in accordance with Par. 8 above, and any changes to the parking layout requires the submission of a parking redesignation plan in accordance with Par. 9 above.

## **ARTICLE 18**

### **ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES**

#### **PART 6      18-600 BUILDING PERMITS**

##### **18-601      Permit Required for Erection of Buildings and Structures**

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit application has been approved by the Zoning Administrator.

##### **18-603      Permit Required for Erection of Buildings and Structures**

1. No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 8 of Chapter 118.

**PART 7      18-700 RESIDENTIAL AND NON-RESIDENTIAL USE PERMITS**

**18-701      Permit Required for Occupancy or Use**

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall be permitted, unless and until a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Part. A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

THIS DEED, Made and entered into this 21st day of July, 1986,  
by and between CHARLES A. VENUTO and LYNN VENUTO, his/ <sup>wife</sup> parties of the first part,  
and CHARLES F. SWEENEY, unmarried, as and for his sole and separate  
equitable estate, party of the second part,

W I T N E S S E T H

That for and in consideration of the sum of Ten Dollars (\$10 00) cash in hand  
paid, and other good and valuable consideration, receipt of all of which is hereby  
acknowledged, the parties of the first part hereto do hereby grant, bargain, sell and  
convey, with GENERAL WARRANTY of title unto the party of the second part, all  
of that certain lot or parcel of land situate, lying and being in the County  
of Fairfax, State of Virginia, and more particularly described as follows

Lot D-2, containing 146,256 square feet, Sydney B  
Smith Property, as the same appears duly dedicated,  
platted and recorded in Deed Book 2069 at Page 301,  
among the land records of Fairfax County, Virginia

AND BEING the same property conveyed to the parties  
of the first part by Deed recorded in Deed Book 5784  
at page 952 among the aforesaid County land records

GRANTEE'S ADDRESS 6803 Montivideo Square Court  
Falls Church, Virginia 22043

CONSIDERATION \$351,014 40

STATE TAX	<u>526.65</u>
COUNTY	<u>175.55</u>
TRANSFER	<u>1.00</u>
CLERK	<u>10.00</u>
GRANTEE	<u>351.50</u>
TOTAL	<u>351.014.40</u>

1064 20

JOSEPH E. BANKERT & ASSOC.  
ATTY & COUNSELOR AT LAW  
3025 HAMAKER COURT  
FAIRFAX, VA. 22031

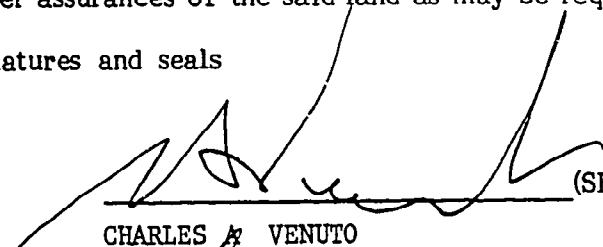
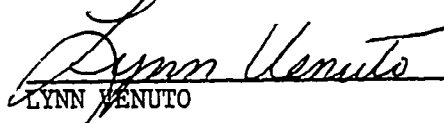
TO HAVE AND TO HOLD the said property unto the party of the second  
part, as and for his sole and separate equitable estate, free from the control and  
marital rights of any present or future wife and free from any dower rights of any  
present wife or any future wife of the said party of the second part, all of which are  
hereby expressly excluded, and with full right and complete authority in the said party  
of the second part to alien, convey, encumber and otherwise deal with and dispose of  
the same without the necessity of the joinder by or with his wife.

~~Law Office  
BROCK & BANKERT  
4900 Leesburg Pike  
Alexandria, Va 22302  
800-0440~~

THIS CONVEYANCE is made subject to the restrictions and conditions contained in the Deeds forming the chain of title to this property

SAID PARTIES OF THE FIRST PART COVENANT that they have the right to convey the said land unto the party of the second part, that they have done no act to encumber the same, that the said party of the second part shall have quiet possession of the said land, free from all encumbrances, that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite.

WITNESS the following signatures and seals


 (SEAL)  
CHARLES A. VENUTO  
 (SEAL)  
LYNN VENUTO

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, whose notarial commission expires the 4 day of July, 1988, do hereby certify that Charles A Venuto and Lynn Venuto, whose names are signed to the foregoing Deed dated July 21, 1986, have acknowledged the same before me in my jurisdiction aforesaid

GIVEN under my hand this 21 day of July, 1986

  
Notary Public


GRANTEE

JOSEPH E. BANKERT & ASSOC.  
ATTY & COUNSELOR AT LAW  
3025 HAMAKER COURT  
FAIRFAX, VA 22031

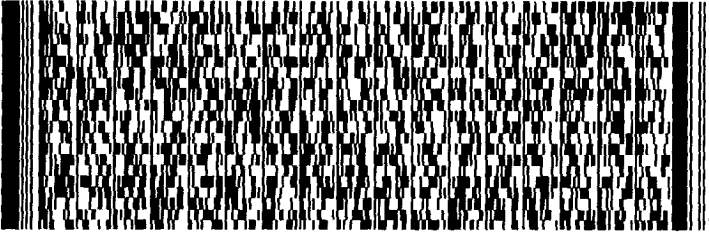
~~Law Offices  
BROCK & BANKERT  
4900 Leeburg Pike  
Alexandria, Va 22302  
820-8440~~

RECORDED W/CERTIFICATE ANNEXED

1986 JUL 22 PM 12:59

FAIRFAX COUNTY VA  
TESTE   
CLERK

**Fairfax County Circuit Court  
DMZ Cover Sheet Application v2.2**



Consideration	0	Consideration/Actual Value %	100
Actual/Assessed	0	Tax Exemption	811
Code Section	58.1-811(D)		
DEM Number		Tax Map Number	113-2- -03- -0000-D2
Original Book	6435	Original Page	1355
Title Company		Title Case	
Property Descr.	SYDNEY B SMITH PROPERTY LOT D-2		Mutiple Lots? NO
Return To Party Name:	JUSTUS M HOLME JR ESQ	Address:	10560 MAIN STREET, SUIT 111, FAIRFAX, VA 22030
Certified	NO	Copies	0
		Page Range	

**Instruments**

DEED OF GIFT

**Grantor(s)**

SWEENY, CHARLES F\_I\_N

**Grantee(s)**

GILES INDUSTRIAL LLC\_F\_N

Prepared by & return to:  
Justus M. Holme, Jr. Esq. VSB#04937  
10560 Main Street, Suite 111  
Fairfax, VA 22030  
Consideration: Gift

MAP# 113-2-03-D2

Grantee: GILES INDUSTRIAL, LLC, a Virginia LLC.  
1933 Franklin Avenue  
McLean, Va. 22101

**THIS DEED WAS PREPARED WITHOUT THE BENEFIT OF TITLE EXAMINATION**

**THIS DEED EXEMPT FROM RECORDING TAXES PURSUANT TO  
VIRGINIA CODE SECTION 58.1-811(D) DEED OF GIFT**

THIS DEED, Made and entered into this 16<sup>th</sup> day of December, 2015 by and between CHARLES F. SWEENEY, married, GRANTOR; and GILES INDUSTRIAL, LLC, a Virginia LLC, GRANTEE.

**W I T N E S S E T H :**

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, receipt of all of which is hereby acknowledged, GRANTOR hereto does hereby grant, bargain, gift and convey, with General Warranty and English Covenants of title unto the GRANTEE, all of that certain lot or parcel of land situate, lying and being in the County of Fairfax, State of Virginia, and more particularly described as follows:

Lot D-2, containing 146,256 square feet, Sydney B. Smith Property, as the same appears duly dedicated, platted and recorded in Deed Book 2069 at Page 301, among the land records of Fairfax County, Virginia.

AND BEING the same property conveyed to the party of the first part by Deed recorded in Deed Book 6435 at Page 1355 among the aforesaid County land records.

THIS CONVEYANCE is made subject to the restrictions and conditions contained in the Deeds forming the chain of title to this property.

WITNESS the following signature and seal:

Charles F. Sweeny (SEAL)  
Charles F. Sweeny

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

I, the undersigned, Notary Public in and for the jurisdiction aforesaid, do certify that Charles F. Sweeny, whose name is signed to the foregoing Deed dated December 16, 2015 has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand this 21<sup>st</sup> day of December, 2015.

[Signature]  
Notary Public

My Commission Expires:  
June 30, 2017  
Registration No.  
7250015

**KATHERINE MARIE SHEPARD**  
NOTARY PUBLIC  
REG. #7250015  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES JUNE 30, 2017



FAIRFAX COUNTY

Melinda

10125 ATTACHMENT 4

Department of Environmental Management
Division of Design Review
12055 Government Center Parkway
Fairfax, Virginia 22035-5503

V I R G I N I A

Telephone (703) 324-1720

February 1, 1996



Charles F. Sweeney
Box 783 Rivermont Drive
Front Royal, Virginia 22630

Subject: Rock Hard Excavating, Tax Map #113-2-003-D-2, Mount Vernon District

Reference: Minor Site Plan Waiver No. 016973

Dear Mr. Sweeney:

Please be advised that the minor site plan request to use the premises for a contractors storage yard (equipment and materials only - no employees) cannot be recommended favorably due to insufficient justification. The basis for this is detailed on the enclosed reviewer's comments by Donald L. Croll, dated January 30, 1996.

Should you have any questions or require additional information, please contact Donald Croll, Site Review Branch at 324-1720.

Sincerely,

[Handwritten signature]

Yong K. Paek, Chief
Site Review Branch

YP/DLC/rtk

Enclosed

cc: Melinda Artman, Deputy Zoning Administrator, Zoning Permit Review Branch, OCP
Carl Sivertsen, Deputy Zoning Administrator, Zoning Enforcement Branch, OCP
Monica Mongoven, Chief, Permits Branch, DEM
Waiver File



# COUNTY OF FAIRFAX, VIRGINIA

**PLAN NUMBER  
& NAME**

**MSP #016973  
Rock Hard  
Excavating**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
DIVISION OF DESIGN REVIEW**

<b>A.</b>	<b>Plan Reviewer</b>	<b>Donald L. Croll, PE Engineer III</b>
<b>B.</b>	<b>Date</b>	<b>January 30, 1996</b>
<b>C.</b>	<b>Action</b>	<input type="checkbox"/> <b>Approved</b> <input checked="" type="checkbox"/> <b>Not Approved</b> <input type="checkbox"/> <b>Reviewed</b> <input type="checkbox"/> <b>Approved as noted</b>

#	COMMENTS	REFERENCE
1.	Furnish required street lights.	ZO § 17-201.12 PFM § 7-1000
2.	Show Giles Run Road = State Route 3362	
3.	Entrance - Either show legal authority for using the 55' easement for access or construct appropriate access directly to Giles Run Road.	New access to SR 3362 would require VDOT permit
4.	Show the dimension from the $\text{CL}$ of the R/W to the edge of the R/W.	
5.	The Drawing should be captioned "Minor Site Plan"	
6.	Waiver is needed for sidewalks or construct sidewalks.	ZO § 17-201.2
7.	Show computations for adequate stormwater detention or obtain a waiver for stormwater detention. Abbreviated waiver may be appropriate.	ZO § 17-201.8 Code Chapter 106 PFM § 6-0200
8.	Show compliance with CBAY Ordinance.	ZO § 17-105.2H Code Chapter 118
9.		
10.		
11.		
12.		
13.		
14.		

TO: Department of Environmental Management  
Division of Design Review - Plan Control Section  
12055 Government Center Parkway, 1st Floor  
Fairfax, Virginia 22035-5503

Waiver # 016973  
Page 1 of \_\_\_\_\_  
Amount: \$500  
Date Paid 11/17/95  
Receipt # \_\_\_\_\_

- SITE PLAN WAIVER REQUEST - (Per Zoning Ordinance, Section 17-103.3)
- SITE PLAN EXCEPTION REQUEST - (Per Zoning Ordinance, Section 17-103.1)

PLEASE PRINT OR TYPE (Use Additional sheets as necessary)

Applicant's Firm Name: Rock Haed Excavating  
Applicant's Name: Charles F. Sweeney  
Address: Box 783 Rivermont Dr  
Front Royal VA. 22630 Phone #: 703-742-5444

Name of Business Proposing to Occupy site: Rock Haed Excavating current occupant. PM. 12 years

Describe the nature and extent of the proposed use: Existing Contractor's Storage Yard Equipment & Materials only (No Employees)

PROPERTY FOR WHICH WAIVER REQUESTED:

Tax Map #: 113-2-(C3) D-2 Parcel: D-2 District \_\_\_\_\_  
Address: 10125 Giles Run Road  
Existing Zoning: I-6  
Name of previous Occupant: Venatio  
Last previous use on this Site: Contractor Storage Yard

RELATIONSHIP OF APPLICANT TO LANDOWNER

- SAME
- TENANT
- ATTORNEY for ( ) OWNER - ( ) TENANT
- ENGINEER for ( ) OWNER - ( ) TENANT
- OTHER - Specify \_\_\_\_\_

Terry Bohard  
703-742-5444  
703-771-0602 PAER

Name of Landowner of Record: Charles F. Sweeney

- Are all site facilities which are required to be installed for site plan approval now existing in accordance with the County Zoning Ordinance? (see list below)  YES
- Is a service road existing along front of subject site?  YES
- Is a service road existing along front of the adjoining site?  YES
- If YES, where: \_\_\_\_\_
- Is curb and gutter existing along front of subject site?  YES
- Is curb and gutter existing along front of site to the right (facing street)?  YES
- Is curb and gutter existing along front of site to the left (facing street)?  YES
- Is sidewalk existing along front of subject site?  YES
- Is sidewalk existing along front of site to the right (facing street)?  YES
- Is sidewalk existing along front of site to the left (facing street)?  YES
- Does the County trails plan show a proposed trail on this site?  YES

SITE PLAN WAIVER REQUEST.

Page 2 of 3

Does site adjoin an existing residential use on the North \_\_\_\_\_? [ ] YES [X] NO  
 South \_\_\_\_\_? [ ] YES [X] NO  
 East \_\_\_\_\_? [ ] YES [X] NO  
 West \_\_\_\_\_? [ ] YES [X] NO

What screening is now existing, adjoining abutting residential uses? (Specify Location, Type and Height of Fences and Wall: Location, Type, Number and Height of Trees, etc.) N/A.

What additional screening is proposed to be installed adjoining abutting residential areas? N/A.

How is surface drainage from the subject site currently being disposed of (into what type of outfall system, and where is it located)? NONE

What additional facilities are proposed to provide for adequate drainage? NONE

How is required storm water detention to be accommodated? NONE

Does Zoning Ordinance Permit this use: [X] by right [ ] By BZA Use Permit [ ] By BOS SE

What new construction is proposed on this site? NONE

Gross Floor Area of Building: \_\_\_\_\_ SQ. FT.  
 Net Floor Area of Building: \_\_\_\_\_ SQ. FT.

Number Employees Proposed: NONE Number of Seats (if restaurant, theatre, etc.): \_\_\_\_\_  
 Number Company Vehicles: \_\_\_\_\_ Number of Parking Spaces Required: \_\_\_\_\_  
 Number Parking Spaces Provided: \_\_\_\_\_

What specific construction improvement is a site plan waiver being requested for? NONE

Provide Basis for this request: To obtain Non-Residential Use Permit  
See CM

What is Section/Paragraph being waived/modified? ( See top of Page 1) \_\_\_\_\_  
 How long a period of time is the Waiver requested for? \_\_\_\_\_  
 State Public Benefit (To the County) that results from granting this request: \_\_\_\_\_

Have other waivers been requested on subject property?

YES  NO

If YES, give type, number, date of approval and/or expiration, and conditions of approval: \_\_\_\_\_

\_\_\_\_\_

ADDITIONAL INFORMATION REQUIRED WITH SUBMISSION

- A. One copy of Fairfax County tax map with site marked.
- B. One copy of plat showing site boundary, existing buildings, parking, entrances, existing curb and gutter, sidewalk, drainage and all proposed construction facilities?
- C. Pictures of site and road frontage at site, and looking right and left along edge of road will be helpful.
- D. If required, is a copy of the BZA or BOS approval attached?  YES  NO
- E. If required, is a copy of the plat submitted to BZA or BOS attached?  YES  NO
- F. **REQUIRED: SUBMIT SIX (6) COPIES OF WAIVER FORM AND SIX (6) COPIES OF PLAN, SKETCH OR DRAWING**

=====

I HEREBY CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES.

Applicant's Signature: \_\_\_\_\_

Owner, Developer: \_\_\_\_\_

Print Name and Title



# FAIRFAX COUNTY

OFFICE OF COMPREHENSIVE PLANNING  
ZONING ADMINISTRATION DIVISION  
Zoning Enforcement Branch  
12055 Government Center Parkway, Suite 800  
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 324-3924

September 20, 1995

*Rec.* 10/18/95

Charles F. Sweeny  
P.O. Box 418  
Fairfax Station, VA 22039

Certified Mail  
Return Receipt Requested  
Receipt #Z 760 120 148

Re: 10125 Giles Run Road  
Sydney B. Smith Property, Lot D2  
Tax Map Ref: 113-2 ((3)) D2  
Zoning District: I-6

Dear Mr. Sweeny:

A zoning inspection conducted on July 21, 1995 at 10:00 a.m. and August 25, 1995 at 11:00 a.m. revealed that Rock Hart Excavating Company is operating a storage yard and junk yard, which are permitted uses in an I-6 Zoning District, at the above-referenced property. The following items were observed on the property: two (2) construction trailers, two (2) storage trailers, three (3) front-end loaders, five (5) dump trucks, an oil tank, buckets, trash and debris.

A search of the Fairfax County Zoning records revealed site plan approval has not been obtained for this use as required by Par. 3 of Sect. 17-103 of the Fairfax County Zoning Ordinance which states:

Prior to construction and/or establishment, the following uses, including modifications or alterations to existing uses, shall require site plan or minor site plan approval unless exempt under Sect. 104 below:

3. All permitted uses in the I districts.

This search also revealed that a Non-Residential Use Permit (Non-RUP) has not been obtained for this use as required by Sect. 18-701 of the Fairfax County Zoning Ordinance.

Therefore, you are in violation of Sect. 18-701 of the Fairfax County Zoning Ordinance, which states:

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall be permitted, unless and until

Charles F. Sweeny  
September 20, 1995  
Page Two

50'  
Buffer  
1

a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Part. A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

This letter will serve as official notice for you to clear this violation within thirty (30) days of receipt of this notice. Compliance can be accomplished by:

- Vacating the premises and removing all trucks, the front-end loaders, construction trailers, storage trailers, oil tank, buckets, trash and debris from the property;  
or
- Obtaining site plan approval through the Department of Environmental Management; and
- Obtaining the required Non-Residential Use Permit.

2nd Floor

Specific instructions and requirements relative to the Non-Residential Use Permit can be obtained by contacting the Zoning Administration Division, Zoning Permit Review Branch, 12055 Government Center Parkway, Fairfax, Virginia, telephone (703) 222-1082, between the hours of 8:00 AM and 4:00 PM, Monday through Friday.

222-1082

222-0801

II

You may have the right to appeal this notice of zoning violation within thirty (30) days of the date of this letter in accordance with Sec. 15.1-496.1 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of the decision and the grounds for the appeal, any other information you may wish to submit and a \$30.00 filing fee. Once an appeal application is accepted by the BZA, it is scheduled for public hearing and decision before the BZA.

324-1290

Failure to comply with this notice may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Charles F. Sweeny  
September 20, 1995  
Page Three

Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at (703) 324-1321 or (703) 324-1300.

Sincerely,

*John A. Campbell, Sr.*  
JOHN A. Campbell, Sr.  
Senior Zoning Inspector

324-1324

324-1324

JAC/elf  
#95-1317/216

cc: ZPRB

324-1324



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

September 18, 2019

Certified Mail: 7017 0190 0000 5145 8196

Giles Industrial LLC  
1933 Franklin Avenue  
McLean, VA 22101

Re: Notice of Alleged Violation of the *Fairfax County Code, Chapter 68.1 Individual Sewage Disposal Facilities* at 10125 Giles Run Road, Lorton, VA 22079; Tax Map: 113-2-003-D2

Dear OWNER:

This Notice of Alleged Violation (NOAV) is to inform you that the Fairfax County Health Department has observed certain conditions on your property which may constitute threats to public health and the environment. Observations forming the basis of this NOAV include:

- A complaint investigation visit conducted September 16, 2019, showed evidence that this property is operating a daily, commercial business.
- Currently, this property has no approved means of sewage disposal.

These observations, if verified, constitute real or potential threats to the health and safety of the environment.

This NOAV serves to remind you that it is your responsibility, as owner of your property, to operate the onsite sewage disposal system according to the applicable laws and regulations of the *Fairfax County Code, Chapter 68.1 Individual Sewage Disposal Facilities*:

### **12 VAC 5-610-80. Sewerage systems and/or treatment works required.**

*C. All buildings, residences, and structures designed for human occupancy, employment or habitation and other places where humans congregate shall be served by an approved sewerage system and/or treatment works. An approved sewerage system or treatment works is a system for which a certificate to operate has been issued jointly by the department and the Department of Environmental Quality or a system which has been issued a separate permit by the commissioner.*

#### **Fairfax County Health Department**

*Division of Environmental Health*

10777 Main Street, Suite 111, Fairfax, VA 22030

Phone: 703-246-2444 TTY: 711 Fax: 703-653-9448

[www.fairfaxcounty.gov/health](http://www.fairfaxcounty.gov/health)





**12VAC5-610-170. Enforcement of regulations.**

All sewage handling and disposal facilities shall be constructed and operated in compliance with the requirements as set forth in this chapter. The commissioner may enforce this chapter through any means lawfully available.

- A. Notice. Subject to the exceptions indicated below whenever the commissioner or the district or local health department has reason to believe a violation of any of these regulations has occurred or is occurring, the alleged violator shall be notified. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts which form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (See § 32.1-27 of the Code of Virginia). When the commissioner deems it necessary, he may initiate criminal prosecution or seek civil relief through mandamus or injunctive relief prior to giving notice.

Your failure to take action may result in enforcement action as contemplated by Title 32.1 of the *Code of Virginia*.

The Fairfax County Health Department recommends you take the following steps to mitigate the potential public health and environmental threats indicated in this NOAV:

- Immediately vacate the property. This alone will cease the NOAV. However, you should also be working with an expert to determine if an onsite sewage disposal system can be installed on the property. You must contact an Onsite Soil Evaluator immediately to determine if the property can support an onsite sewage disposal system and notify the Health Department that this has taken place within 30 days.
- You must have a temporary means of sewage disposal for the property, typically this could be a portable toilet. Contact a portable toilet company licensed in Fairfax County and submit a copy of the contract to the Fairfax County Health Department. Be advised that providing a portable toilet on site is temporary and is not a permanent means of sewage disposal.

I should advise you failure to institute the recommendations above may affect further investigation and potential enforcement.

Giles Industrial LLC  
September 18, 2019  
Page 3

This NOAV sets forth Fairfax County Health Department's observations and recommendations, but it is not a case decision as defined in §2.2-4001 of the *Code of Virginia*. If you have additional facts or evidence you believe contrary to the observations listed above and wish to schedule an informal fact-finding conference (IFFC) pursuant to §2.2-4019 of the *Code of Virginia*, please contact Kevin Wastler, Onsite Sewage and Water (OS&W) Section Supervisor at (703) 246-2201 within 30 days of the receipt of this NOAV. Bear in mind should you fail to attend a scheduled IFFC absent good cause, the Health Director may issue an adverse case decision as contemplated by §2.2-4020.2 of the *Code of Virginia*.

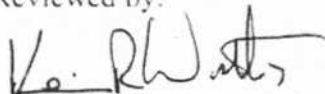
Please feel free to contact me at (703) 246-8463 or by e-mail at [marty.shannon@fairfaxcounty.gov](mailto:marty.shannon@fairfaxcounty.gov) if you have any questions or concerns.

Sincerely,



Marty Shannon MAOSE  
Senior Environmental Health Specialist

Reviewed by:



Kevin Wastler, MAOSE  
Environmental Health Supervisor

Cc: Rachael Perrott, Department of Code Compliance

# PICTOMETRY IMAGE OF THE PROPERTY ATTACHMENT 6



# ATTACHMENT 7

## PC19-MV-006

Address/Tax Map Parcel: 10208 Old Colchester Road  
Tax Map (TM) Parcel 113-2 ((1)) 53

Nominator: Gifford Hampshire, Blankingship & Keith P.C.  
Supervisor District: Mount Vernon  
Planning Area: Area IV  
Planning District/Special Area: Lower Potomac Planning District / Lorton – South Route 1 Suburban Center  
Lorton-South Route 1 (LP2) Community Planning Sector, Sub-unit H4

Acreeage: 1.21 acres of a total 9.38-acre parcel

Current Plan Map/Text: Residential uses at 0.2 – 0.5 dwelling units per acre (du/ac)



Proposed Amendment: Modify boundaries between LP2 Lorton-South Route 1 (LP2) Community Planning Sector Sub-units F2 and H4 to move a 1.21-acre portion of Sub-unit H4 to Sub-unit F2. The modification of the planning sector boundary would amend the plan recommendation for the nominated area of the site from the adopted low-density residential use to industrial use to accommodate a septic field for the adjoining property at 10125 Giles Run Road.

### Considerations:

The subject site is a land-locked, largely wooded parcel in the Lorton-South Route 1 Suburban Center. A review of historical aerial imagery indicates that industrial uses on adjacent properties to the north and west appear to have encroached on portions of the subject site over time. The site is located in Sub-unit H4 of the LP2-Lorton-South Route 1 Community Planning Sector, which is planned for residential use at 0.2 – 0.5 du/ac with recommendations to provide substantial buffering from the adjacent industrial uses to the west in Sub-unit F2. Properties immediately abutting the site to the south are similarly planned for residential uses at 0.2 – 0.5 du/ac and developed with low-density single-family houses.

The property to the west of the subject site at 10125 Giles Run Road (TM Parcel 113-2 ((3)) D2) is developed with industrial uses (truck and container storage related to an excavation business), is under related ownership to the subject site, and currently has outstanding violations from the Fairfax County Department of Planning and Development and Health Department due to the lack of an approved site plan and septic service, respectively. The nomination of 1.21-acres on the subject site is being pursued in order to remedy the Health Department violation. The nomination proposes to redraw the sub-unit boundary line and replan the site for industrial use, which would prepare for a future rezoning application to the I-6 District (Heavy Industrial District), a potential lot line adjustment, and the construction of a septic field to serve the adjoining industrial property. This creation of a septic field would provide an avenue for the review of a site plan on the adjoining industrial property and 1.2 acres of the subject site.

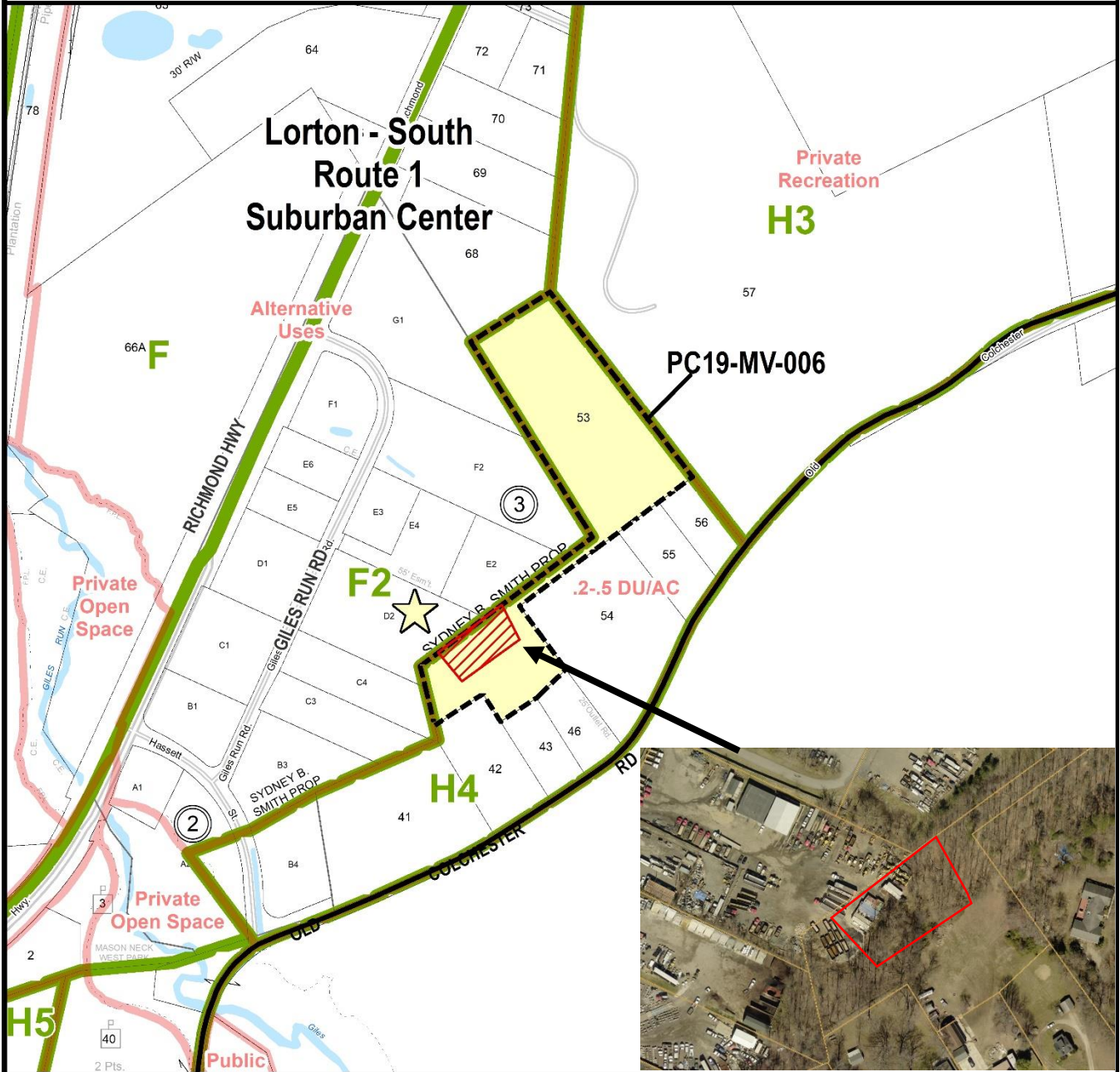
The adopted LP2 Community Planning Sector-wide plan text calls for the protection of stable neighborhoods from encroachment by commercial, industrial, higher density residential projects or other disruptive land uses and buffering of residential areas from abutting and otherwise intrusive uses that have odor, noise, and visual impacts. Additionally, the Sub-unit H4 recommendations call for substantial buffering and screening between the adjacent industrial uses and low-density residential uses in order to minimize potential use conflicts. Given the proposed location of the septic field (see attached map and aerial photograph inset), the construction would likely result in the significant reduction or removal of an existing tree line that currently separates the industrial and low-density residential uses and constitutes the buffer that the Plan envisions to remain.

### Preliminary Staff Recommendation:

PC19-MV-006 is not recommended to be added to the Comprehensive Plan Amendment Work Program. The nomination would expand the boundaries of the industrial use recommendation, and conflicts with recommendations for the sub-unit regarding buffering the planned low-density residential use from the adjacent industrial uses.

# PC19-MV-006

10208 Old Colchester Rd



PC19-MV-006



Nomination Area



Related Property, 10125 Giles Run Rd



Baseline Plan Recommendation



Development Center



Land Unit

500 FEET

PREPARED BY THE DEPARTMENT OF PLANNING AND DEVELOPMENT USING FAIRFAX COUNTY GIS  
MAP CURRENT TO FEBRUARY 2020

G:\projects\lcp\pd\OTPA\_GRAPHICS\19\_items\2019-20 Site Specific Plan Amendment Process\NOMINATIONS\PC19-MV-006\

